

Because “there is no ‘commissioner’ in the federal judicial system, federal courts have ruled that a magistrate judge may serve in that role for purposes of conducting proceedings in aid of execution under West Virginia Code § 38–5–1.” *U.S. Foodservice, Inc. v. Donahue*, No. 3:10-cv-183, 2010 WL 5067939, at *1 (S.D.W. Va. Dec. 3, 2010); *see also Chicago Pneumatic Tool Co. v. Stonestreet*, 107 F.R.D. 674 (S.D.W. Va. 1985); *Byron Originals, Inc. v. Iron Bay Model Co.*, No. 5:05-cv-82, 2006 WL 1004827, at *1 (N.D.W. Va. Apr. 12, 2006). Magistrate judges in this district have frequently been appointed to preside over proceedings in aid of execution, as part of the need to “modif[y] state procedure to conform with federal practice.” *Clark v. Wilbur*, 913 F. Supp. 463, 468 (S.D.W. Va. 1996), *aff’d sub nom. Clark v. Allen*, 139 F.3d 888 (4th Cir. 1998).

The parties are notified that an examination of Southern Coal in aid of execution will commence on the 2nd day of August, 2019, at 11:00 a.m., at the Robert C. Byrd United States Courthouse, 300 Virginia Street, East, Room 5400, Charleston, West Virginia. The examination will be conducted by counsel for National Union, with the participation of the United States Magistrate Judge acting as Special Commissioner. One or more representatives of the judgment debtor Southern Coal are hereby Ordered to appear at the date and time specified herein to testify under oath and furnish information to aid in enforcement of the money judgment or to answer concerning property or debt. It is the duty of Southern Coal to designate one or more of the following to appear and be examined: officers, directors, managing agents, or other persons who are familiar with the property and debts of Southern Coal. The deposition shall be taken before a Certified Shorthand Reporter or other qualified notary.

It is FURTHER ORDERED that the issuance of a summons to Southern Coal to appear at the aforementioned date and time shall be served on counsel of record for Southern Coal. Southern Coal shall answer upon oath such questions as shall be propounded by counsel for National Union,

or by the said Magistrate, and to convey or assign to the United States Marshal for the Southern District of West Virginia such money, bank notes, securities, evidences of debt, other personal property, choses in action or other intangible personal property as may be ordered for the enforcement and payment of the judgment, including interest and costs, outstanding in the above matter.

The Clerk is directed to transmit a copy of this Order to counsel of record.

ENTER: June _____, 2019

Dwane L. Tinsley
United States Magistrate Judge

Submitted by:

Richard F. Shearer
Shook, Hardy & Bacon L.L.P.
2555 Grand Blvd.
Kansas City, MO 64108

Stuart A. McMillan
William Lorensen
Bowles Rice LLP
600 Quarrier Street
Charleston, WV 25301

Copies to:

John F. Hussell, IV
Andrew Ellis
Wooton Davis Hussell & Ellis, PLLC
300 Summers St., Suite 1230
P.O. Box 3971
Charleston, WV 25339